

Chief Judge Ricardo S. Martinez
Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

FEDIR OLEKSIYOVICH HLADYR,

Defendant.

NO. CR17-276RSM

NOTICE OF RELATED CASES AND
REQUEST FOR REASSIGNMENT OF
CASES

FILED UNDER SEAL

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDRII KOLPAKOV,

Defendant.

RELATED TO
NO. CR18-159RSM

UNITED STATES OF AMERICA,

Plaintiff,

v.

DENYS IARMAK,

Defendant.

RELATED TO
NO. CR19-257RAJ

COMES NOW the United States of America, by and through undersigned counsel for said District, and submits the following notice advising the Court that the above-captioned cases, namely, previously related *United States v. Hladyr*, CR17-276RSM, *United States v. Kolpakov*, CR18-159RSM, and the more recently charged *United States v. Iarmak*, CR19-257RAJ, are related and, in fact, inextricably intertwined and involve common questions of fact and law. For the reasons set forth below, the United States requests that these cases be assigned to the same judge as they are inextricably intertwined and otherwise involve common questions of fact and law.

I. BACKGROUND

The above-captioned cases all arise out of an investigation by the Federal Bureau of Investigation (FBI) into a transnational cybercriminal group known as "FIN7," which has engaged and continues to engage in a sophisticated malware campaign targeting countless U.S. companies and their customers. To date, FIN7 has attacked the computer networks of over 200 separate victim-companies with the goal of infecting victim computer systems with malware that allows the group to access and steal proprietary and non-public information, including but not limited to customer payment card data. FIN7 has stolen tens of millions of payment card numbers and caused millions of dollars in losses to numerous victims.

The grand jury has returned sealed indictments in separate cases related to this investigation. Separate indictments were issued, in part, to preserve the secrecy of the investigation while the United States pursued the arrest and extradition of various FIN7 members. Following their arrests abroad on charges from this District, which occurred on various dates in 2018, the separate indictments against Defendant Fedir Hladyr (charged in *United States v. Hladyr*, CR17-276RSM), Defendant Dmytro Fedorov (charged in *United States v. Fedorov*, CR18-004RSM), and Defendant Andrii Kolpakov (charged in *United States v. Kolpakov*, CR18-159RSM), all Ukrainian citizens, were unsealed. The factual allegations and charges in each of the four cases are substantially the same. Namely, each of the defendants is charged with the following 26 counts:

- Count 1: Conspiracy to Commit Wire and Bank Fraud, in violation of Title 18, United States Code, Section 1349;
- Counts 2-15: Wire Fraud, in violation of Title 18, United States Code, Section 1343;
- Count 16: Conspiracy to Commit Computer Hacking, in violation of Title 18, United States Code, Section 371;
- Counts 17-19: Accessing a Protected Computer in Furtherance of Fraud, in violation of Title 18, United States Code, Sections 1030(a)(4) and (c)(3)(A) and 2;
- Counts 20-22: Intentional Damage to a Protected Computer, in violation of Title 18, United States Code, Sections 1030(a)(5)(A) and (c)(4)(B) and 2;
- Count 23: Access Device Fraud, in violation of Title 18, United States Code, Sections 1029(a)(3), (b)(1), and (c)(1)(A) and 2; and,
- Counts 24-26: Aggravated Identity Theft, in violation of Title 18, United States Code, Sections 1028A(a) and 2.

All such matters have been related and are assigned to the Honorable Ricardo S. Martinez.

To date, Defendants Hladyr and Kolpakov have made appearances in the Western District of Washington on the aforementioned charges related to the hacking scheme.

Defendant Hladyr was extradited from Germany to the United States and, having entered guilty pleas, is pending sentencing. Defendant Kolpakov was extradited from Spain to the United States and currently is pending trial scheduled for October 2020.

In November 2019, U.S. authorities obtained information that another identified FIN7 member, Defendant Denys Iarmak, a Ukrainian citizen, had traveled to and was located in Thailand. On about November 30, 2019, Defendant Iarmak was arrested by Thai authorities at Suvarnabhumi Airport in Bangkok, Thailand as he transited back to Ukraine, based on charges in this District. A federal grand jury sitting in the Western District of Washington has returned a criminal indictment in this matter, *United States v. Iarmak*, CR19-257RAJ, charging Defendant Iarmak with the aforementioned 26 felony counts. Defendant Iarmak remains in Thai custody pending extradition.

II. DISCUSSION

Rule 13(a) of the Local Criminal Rules of the Western District of Washington provides that when cases are related such that they involve questions of common law or fact, it may be appropriate that the cases be assigned to “the judge to whom the case bearing the earliest filing number was assigned, at his or her option.”¹ Pursuant to Rule 13(a), the United States requests that the Court consider reassigning all FIN7-related cases to a single judge. The Honorable Ricardo S. Martinez currently is assigned the earliest filed case, *United States v. Hladyr*, CR17-276RSM, *United States v. Fedorov*, CR18-004RSM, and *United States v. Kolpakov*, CR18-159RSM. The recently charged *United States v. Iarmak*, CR19-257RAJ, is assigned to the Honorable Richard A. Jones.

During this ongoing investigation, the United States has collected a voluminous amount of electronic evidence, including data from servers located around the world and over one hundred email accounts. Discovery in this case is extremely voluminous and likely to present challenges, as the electronic evidence alone comprises numerous *terabytes* of data, much of which is laden with malware. If the defendants elect to proceed to trial, it is highly likely that defense counsel will need to retain the services of a forensics or e-discovery firm to manage and review discovery. In light of these potential challenges, it would be helpful if any discovery matters, particularly matters that involve the use of CJA resources, are addressed by a single judge presiding over all FIN7-related cases.

Furthermore, unlike many cyber prosecutions, this prosecution of FIN7 members presents a situation where more than one defendant will face the prospect of trial. It is likely that either the government or the defense, or both, will request the consolidation of the cases for trial. Rule 13 of the Federal Rules of Criminal Procedure states: “The court may order that separate cases be tried together as though brought in a single indictment or information

¹ Local Rule 13(b) states: “Counsel are encouraged to file a notice of related case in order to bring such cases to the attention of the court.”

1 if all offenses and all defendants could have been joined in a single indictment or
2 information.” Indeed, all FIN7 defendants could have been joined in a single indictment.²

3 Finally, the goals of efficiency and conservation of judicial resources would be served
4 by a Rule 13(a) reassignment. Each of the defendants were part of a single malware
5 conspiracy, and each defendant is charged with 26 substantively identical felony counts.
6 Accordingly, all four cases involve common questions of law and fact. These cases likely
7 will present discovery challenges, novel pre-trial legal issues, and fact-intensive sentencing
8 considerations. It would be immensely inefficient to litigate these issues before different
9 judges. In addition, the reassignment will allow defense counsel to pool resources. For
10 example, in a recent multi-defendant case that also involved a large amount of electronic
11 discovery, *United States v. Gallinal, et al.*, CR14-165RAJ, defense counsel were able to
12 make use of a single coordinating discovery attorney, rather than duplicating efforts.

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28 ² For instance, given the unique requirements and limitations involving extraditions, the United States is
restrained in its ability to supersede to consolidate separate cases.

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III. CONCLUSION

As set forth above, the United States submits notice that the above-captioned cases, *United States v. Hladyr*, CR17-276RSL, *United States v. Kolpakov*, CR18-159RSM, and *United States v. Iarmak*, CR19-257RAJ, are related, inextricably intertwined and involve common questions of fact and law, and respectfully requests that these cases be assigned to the same judge.

DATED this 1st day of April, 2020.

Respectfully submitted,

TESSA M. GORMAN

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(Acting Under Authority Conferred by 28 U.S.C. §515)

/s/ Steven T. Masada

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